IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2007

CORAM:

THE HON'BLE MR.JUSTICE M.CHOCKALINGAM

CRP.NPD.NOS 1098, 1317 to 1319 OF 2006
and
M.P.NOS.1,2,2,2 of 2006

M.P.Mittalal ...Petitioner in all CRPs.

Vs.

Smt.Rakha ..Respdt. in CRP.Nos.1098 & 1317/06
Smt.Indra Jain ..Respdt. in CRP.Nos.1318 and 1319/06

These Civil Revision petitions have been filed under Section 115 of the CPC against the orders passed in I.A.No.2477 of 2005 in O.S.No.5688 of 2004, I.A.No.2474 of 2005 in O.S.No.5687 of 2004, I.A.No.2475 of 2005 in O.S.No.5685 of 2004 and I.A.No.2476 of 2005 in O.S.No.5686 of 2004 respectively dated 8.11.2005 on the file of VII Assistant Judge, City Civil Court, Madras.

For petitioner : Mr.B.R.Shankaralingam
For Respondents : Mr.T.Skandakumar

O R D E R

The order of dismissal made by the VII Judge, City Civil Court, Madras in I.A.Nos.2477 ,2474, 2475 and 2476 of 2005 dated 8.11.2005 refusing to grant leave to defend O.S.Nos.5688 ,5687, 5685 , 5686 and 5686 of 2004 in the respective suits on the strength of promissory notes are the subject matter of challenge in these revision petitions.

2. The respondents/plaintiffs filed respective suits for recovery of sum of Rs.1,33,500/- , 2,00,200/-, 1,33,500/- and 2,00,200/- alleging that the petitioner/defendant executed promissory notes on 21.9.2002, 17.4.2002, 17.9.2002, 17.4.2002 agreeing to repay the principal amount found therein along with interest at 21% p.a. and sought for a decree. Pending suit, Interlocutory applications were filed by the petitioner/defendant seeking leave to defend the suits under Order 37 of the Code of Civil Procedure. After hearing both sides, the applications were dismissed, since no tribal issues were noticed. Aggrieved over the said orders, the defendant has come before this Court by filing the above Civil Revision petitions.

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3. After hearing the counsel on either side and after looking into the materials available on record, this Court is of the considered opinion that the lower Court is perfectly correct in denying the relief of granting leave to defend the suits. Admittedly, the suits were filed on the strength of promissory notes. The execution of the promissory notes was never denied. What was contended before the Court below in the affidavits in support of the petitions is that the suit summons and the plaint document No.1 alone were served on the petitioner/defendant on the hearing date of the cases i.e. 29.12.2004 and the agreed rate of interest on the loan amount was only 15 percent per annum and not 21% p.a. and the petitioner/defendant have paid the interest till 31.3.2003 at the rate of 21% in all the cases and the defendant issued a letter on 17.11.2004 that the petitioner/defendant was ready and willing to pay the interest, but the respondents/plaintiffs have not come forward to receive the same and the suit pro-notes were received by the respondents/plaintiffs in blank and the same have been filled up by them in order to suit their case. Therefore, there are triable issues in the suits.

4. After looking into the materials available on record, this Court is of the considered opinion that there is no triable issues in the suits. The promissory notes were executed on 21.9.2002, 17.4.2002, 17,9,2002, 17.4.2002 respectively. It is the admitted fact that though the petitioner/defendant was willing to pay the interest, it was not received by the respondents, which would be clearly indicative of the fact that the interest was not paid by the petitioner/defendant and hence the petitioner/defendant executed the promissory notes in favour of the respondents/plaintiffs in and by which, the petitioner/defendant promised to pay sum of Rs.1,00,000/-, Rs.1,50,000/-, Rs.1,50,000/-, Rs.1,00,000/- and Rs.1,50,000/-respectively to the respondents/plaintiffs together with interest thereon at 21% p.a. Thus, what are all stated in the affidavits do not make out triable issues in the suits.

5. Under such circumstances, the lower Court though it fit to dismiss the applications and rightly too. Hence the above civil revision petitions are dismissed. No costs. Consequently, connected M.Ps are also dismissed.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

VJY

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To

1. The Registrar, City Civil Court, Chennai.
2. The Record Keeper, V.R.Section, High Court, Madras.

4 cc To Mr.T.S.Kandakumar, Advocate, SR.36495 yo 36498.

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